

ASSEMBLY BILL

No. 1001

Introduced by Assembly Member Maienschein

(Principal coauthor: Senator Vidak)

(Coauthors: Assembly Members Chávez, Olsen, and Waldron)

(Coauthor: Senator Bates)

February 26, 2015

An act to amend Section 11166 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL’S DIGEST

AB 1001, as introduced, Maienschein. Child abuse: reporting.

The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined, to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Under existing law, the failure to make this report is a crime.

This bill would prohibit a person from impeding or interfering with the making of a report of suspected child abuse or neglect by a mandated reporter. The bill would provide that an intentional violation of these provisions is a misdemeanor and may subject the offender to liability for actual damages sustained by a victim of child abuse or neglect for any abuse or neglect that occurs after the person impeded or interfered with the report being made.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11166 of the Penal Code is amended to
2 read:

3 11166. (a) Except as provided in subdivision (d), and in
4 Section 11166.05, a mandated reporter shall make a report to an
5 agency specified in Section 11165.9 whenever the mandated
6 reporter, in his or her professional capacity or within the scope of
7 his or her employment, has knowledge of or observes a child whom
8 the mandated reporter knows or reasonably suspects has been the
9 victim of child abuse or neglect. The mandated reporter shall make
10 an initial report by telephone to the agency immediately or as soon
11 as is practicably possible, and shall prepare and send, fax, or
12 electronically transmit a written followup report within 36 hours
13 of receiving the information concerning the incident. The mandated
14 reporter may include with the report any nonprivileged
15 documentary evidence the mandated reporter possesses relating
16 to the incident.

17 (1) For purposes of this article, “reasonable suspicion” means
18 that it is objectively reasonable for a person to entertain a suspicion,
19 based upon facts that could cause a reasonable person in a like
20 position, drawing, when appropriate, on his or her training and
21 experience, to suspect child abuse or neglect. “Reasonable
22 suspicion” does not require certainty that child abuse or neglect
23 has occurred nor does it require a specific medical indication of
24 child abuse or neglect; any “reasonable suspicion” is sufficient.
25 For purposes of this article, the pregnancy of a minor does not, in
26 and of itself, constitute a basis for a reasonable suspicion of sexual
27 abuse.

28 (2) The agency shall be notified and a report shall be prepared
29 and sent, faxed, or electronically transmitted even if the child has
30 expired, regardless of whether or not the possible abuse was a

1 factor contributing to the death, and even if suspected child abuse
2 was discovered during an autopsy.

3 (3) A report made by a mandated reporter pursuant to this
4 section shall be known as a mandated report.

5 (b) If, after reasonable efforts, a mandated reporter is unable
6 to submit an initial report by telephone, he or she shall immediately
7 or as soon as is practicably possible, by fax or electronic
8 transmission, make a one-time automated written report on the
9 form prescribed by the Department of Justice, and shall also be
10 available to respond to a telephone followup call by the agency
11 with which he or she filed the report. A mandated reporter who
12 files a one-time automated written report because he or she was
13 unable to submit an initial report by telephone is not required to
14 submit a written followup report.

15 (1) The one-time automated written report form prescribed by
16 the Department of Justice shall be clearly identifiable so that it is
17 not mistaken for a standard written followup report. In addition,
18 the automated one-time report shall contain a section that allows
19 the mandated reporter to state the reason the initial telephone call
20 was not able to be completed. The reason for the submission of
21 the one-time automated written report in lieu of the procedure
22 prescribed in subdivision (a) shall be captured in the Child Welfare
23 Services/Case Management System (CWS/CMS). The department
24 shall work with stakeholders to modify reporting forms and the
25 CWS/CMS as is necessary to accommodate the changes enacted
26 by these provisions.

27 (2) This subdivision shall not become operative until the
28 CWS/CMS is updated to capture the information prescribed in this
29 subdivision.

30 (3) This subdivision shall become inoperative three years after
31 this subdivision becomes operative or on January 1, 2009,
32 whichever occurs first.

33 (4) On the inoperative date of these provisions, a report shall
34 be submitted to the counties and the Legislature by the State
35 Department of Social Services that reflects the data collected from
36 automated one-time reports indicating the reasons stated as to why
37 the automated one-time report was filed in lieu of the initial
38 telephone report.

39 (5) Nothing in this section shall supersede the requirement that
40 a mandated reporter first attempt to make a report via telephone,

1 or that agencies specified in Section 11165.9 accept reports from
2 mandated reporters and other persons as required.

3 (c) A mandated reporter who fails to report an incident of
4 known or reasonably suspected child abuse or neglect as required
5 by this section is guilty of a misdemeanor punishable by up to six
6 months confinement in a county jail or by a fine of one thousand
7 dollars (\$1,000) or by both that imprisonment and fine. If a
8 mandated reporter intentionally conceals his or her failure to report
9 an incident known by the mandated reporter to be abuse or severe
10 neglect under this section, the failure to report is a continuing
11 offense until an agency specified in Section 11165.9 discovers the
12 offense.

13 (d) (1) A clergy member who acquires knowledge or a
14 reasonable suspicion of child abuse or neglect during a penitential
15 communication is not subject to subdivision (a). For the purposes
16 of this subdivision, “penitential communication” means a
17 communication, intended to be in confidence, including, but not
18 limited to, a sacramental confession, made to a clergy member
19 who, in the course of the discipline or practice of his or her church,
20 denomination, or organization, is authorized or accustomed to hear
21 those communications, and under the discipline, tenets, customs,
22 or practices of his or her church, denomination, or organization,
23 has a duty to keep those communications secret.

24 (2) Nothing in this subdivision shall be construed to modify or
25 limit a clergy member’s duty to report known or suspected child
26 abuse or neglect when the clergy member is acting in some other
27 capacity that would otherwise make the clergy member a mandated
28 reporter.

29 (3) (A) On or before January 1, 2004, a clergy member or any
30 custodian of records for the clergy member may report to an agency
31 specified in Section 11165.9 that the clergy member or any
32 custodian of records for the clergy member, prior to January 1,
33 1997, in his or her professional capacity or within the scope of his
34 or her employment, other than during a penitential communication,
35 acquired knowledge or had a reasonable suspicion that a child had
36 been the victim of sexual abuse and that the clergy member or any
37 custodian of records for the clergy member did not previously
38 report the abuse to an agency specified in Section 11165.9. The
39 provisions of Section 11172 shall apply to all reports made pursuant
40 to this paragraph.

1 (B) This paragraph shall apply even if the victim of the known
2 or suspected abuse has reached the age of majority by the time the
3 required report is made.

4 (C) The local law enforcement agency shall have jurisdiction
5 to investigate any report of child abuse made pursuant to this
6 paragraph even if the report is made after the victim has reached
7 the age of majority.

8 (e) (1) A commercial film, photographic print, or image
9 processor who has knowledge of or observes, within the scope of
10 his or her professional capacity or employment, any film,
11 photograph, videotape, negative, slide, or any representation of
12 information, data, or an image, including, but not limited to, any
13 film, filmstrip, photograph, negative, slide, photocopy, videotape,
14 video laser disc, computer hardware, computer software, computer
15 floppy disk, data storage medium, CD-ROM, computer-generated
16 equipment, or computer-generated image depicting a child under
17 16 years of age engaged in an act of sexual conduct, shall,
18 immediately or as soon as practicably possible, telephonically
19 report the instance of suspected abuse to the law enforcement
20 agency located in the county in which the images are seen. Within
21 36 hours of receiving the information concerning the incident, the
22 reporter shall prepare and send, fax, or electronically transmit a
23 written followup report of the incident with a copy of the image
24 or material attached.

25 (2) A commercial computer technician who has knowledge of
26 or observes, within the scope of his or her professional capacity
27 or employment, any representation of information, data, or an
28 image, including, but not limited to, any computer hardware,
29 computer software, computer file, computer floppy disk, data
30 storage medium, CD-ROM, computer-generated equipment, or
31 computer-generated image that is retrievable in perceivable form
32 and that is intentionally saved, transmitted, or organized on an
33 electronic medium, depicting a child under 16 years of age engaged
34 in an act of sexual conduct, shall immediately, or as soon as
35 practicably possible, telephonically report the instance of suspected
36 abuse to the law enforcement agency located in the county in which
37 the images or material are seen. As soon as practicably possible
38 after receiving the information concerning the incident, the reporter
39 shall prepare and send, fax, or electronically transmit a written

1 followup report of the incident with a brief description of the
2 images or materials.

3 (3) For purposes of this article, “commercial computer
4 technician” includes an employee designated by an employer to
5 receive reports pursuant to an established reporting process
6 authorized by subparagraph (B) of paragraph (43) of subdivision
7 (a) of Section 11165.7.

8 (4) As used in this subdivision, “electronic medium” includes,
9 but is not limited to, a recording, CD-ROM, magnetic disk memory,
10 magnetic tape memory, CD, DVD, thumbdrive, or any other
11 computer hardware or media.

12 (5) As used in this subdivision, “sexual conduct” means any of
13 the following:

14 (A) Sexual intercourse, including genital-genital, oral-genital,
15 anal-genital, or oral-anal, whether between persons of the same or
16 opposite sex or between humans and animals.

17 (B) Penetration of the vagina or rectum by any object.

18 (C) Masturbation for the purpose of sexual stimulation of the
19 viewer.

20 (D) Sadomasochistic abuse for the purpose of sexual stimulation
21 of the viewer.

22 (E) Exhibition of the genitals, pubic, or rectal areas of a person
23 for the purpose of sexual stimulation of the viewer.

24 (f) Any mandated reporter who knows or reasonably suspects
25 that the home or institution in which a child resides is unsuitable
26 for the child because of abuse or neglect of the child shall bring
27 the condition to the attention of the agency to which, and at the
28 same time as, he or she makes a report of the abuse or neglect
29 pursuant to subdivision (a).

30 (g) Any other person who has knowledge of or observes a child
31 whom he or she knows or reasonably suspects has been a victim
32 of child abuse or neglect may report the known or suspected
33 instance of child abuse or neglect to an agency specified in Section
34 11165.9. For purposes of this section, “any other person” includes
35 a mandated reporter who acts in his or her private capacity and
36 not in his or her professional capacity or within the scope of his
37 or her employment.

38 (h) When two or more persons, who are required to report,
39 jointly have knowledge of a known or suspected instance of child
40 abuse or neglect, and when there is agreement among them, the

1 telephone report may be made by a member of the team selected
2 by mutual agreement and a single report may be made and signed
3 by the selected member of the reporting team. Any member who
4 has knowledge that the member designated to report has failed to
5 do so shall thereafter make the report.

6 (i) (1) The reporting duties under this section are individual,
7 and no supervisor or administrator may impede or inhibit the
8 reporting duties, and no person making a report shall be subject
9 to any sanction for making the report. However, internal procedures
10 to facilitate reporting and apprise supervisors and administrators
11 of reports may be established provided that they are not inconsistent
12 with this article.

13 (2) The internal procedures shall not require any employee
14 required to make reports pursuant to this article to disclose his or
15 her identity to the employer.

16 (3) Reporting the information regarding a case of possible child
17 abuse or neglect to an employer, supervisor, school principal,
18 school counselor, coworker, or other person shall not be a substitute
19 for making a mandated report to an agency specified in Section
20 11165.9.

21 (j) A county probation or welfare department shall immediately,
22 or as soon as practicably possible, report by telephone, fax, or
23 electronic transmission to the law enforcement agency having
24 jurisdiction over the case, to the agency given the responsibility
25 for investigation of cases under Section 300 of the Welfare and
26 Institutions Code, and to the district attorney's office every known
27 or suspected instance of child abuse or neglect, as defined in
28 Section 11165.6, except acts or omissions coming within
29 subdivision (b) of Section 11165.2, or reports made pursuant to
30 Section 11165.13 based on risk to a child which relates solely to
31 the inability of the parent to provide the child with regular care
32 due to the parent's substance abuse, which shall be reported only
33 to the county welfare or probation department. A county probation
34 or welfare department also shall send, fax, or electronically transmit
35 a written report thereof within 36 hours of receiving the information
36 concerning the incident to any agency to which it makes a
37 telephone report under this subdivision.

38 (k) A law enforcement agency shall immediately, or as soon
39 as practicably possible, report by telephone, fax, or electronic
40 transmission to the agency given responsibility for investigation

1 of cases under Section 300 of the Welfare and Institutions Code
2 and to the district attorney's office every known or suspected
3 instance of child abuse or neglect reported to it, except acts or
4 omissions coming within subdivision (b) of Section 11165.2, which
5 shall be reported only to the county welfare or probation
6 department. A law enforcement agency shall report to the county
7 welfare or probation department every known or suspected instance
8 of child abuse or neglect reported to it which is alleged to have
9 occurred as a result of the action of a person responsible for the
10 child's welfare, or as the result of the failure of a person responsible
11 for the child's welfare to adequately protect the minor from abuse
12 when the person responsible for the child's welfare knew or
13 reasonably should have known that the minor was in danger of
14 abuse. A law enforcement agency also shall send, fax, or
15 electronically transmit a written report thereof within 36 hours of
16 receiving the information concerning the incident to any agency
17 to which it makes a telephone report under this subdivision.

18 *(l) A person shall not impede or interfere with the making of a*
19 *report of suspected child abuse or neglect required under this*
20 *section. A person who intentionally impedes or interferes with a*
21 *report of suspected child abuse or neglect being made is guilty of*
22 *a misdemeanor, and may be liable for actual damages sustained*
23 *by a victim of child abuse or neglect for any abuse or neglect that*
24 *occurs after the person impeded or interfered with the report being*
25 *made.*

26 SEC. 2. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.